

**WEST VIRGINIA DIVISION OF LABOR
WAGE & HOUR SECTION
INVESTIGATION AUTHORITY & REFERRAL INFORMATION**

The following information explains the types of complaints the Wage & Hour Section of the West Virginia Division of Labor has, or does not have, the authority to investigate.

On Pages 3 & 4 we have provided general referral information to other state and federal agencies that are responsible for enforcing some of the issues brought to this agency's attention on a regular basis, which are not under our jurisdiction or authority. Please refer to this information if your situation is listed as an issue that is not under this agency's authority.

If your specific issue is not addressed in this information, you may contact our office by calling 304 356 3929 or 304 558 7890, or sending an email to wageandhour@wv.gov.

THE DIVISION MAY INVESTIGATE THE FOLLOWING TYPES OF COMPLAINTS

Wage Complaints

- Not paid for all hours worked.
- Not paid final wages after separation of employment.
- Not being paid the state minimum wage.
- Not paid for commissioned sales, which were earned according to company policy.
- Unauthorized payroll deductions. Deductions that were withheld from employee wages other than regular taxes, fringe benefit plans, etc.
- Not paid to attend a mandatory training session or meeting.
- An employee's hourly rate of pay (or salary amount) was reduced without the benefit of receiving an advance pay period's notice of the reduction.
- A payroll check was returned for insufficient funds.
- Not paid for traveling from one place to another within the course of a regular workday.
- Denied payment of a fringe benefit that was earned per the terms and conditions of written company policy. (See next section for further information)

Fringe Benefit Complaints

Employers are not required by state law to provide their employees with any type of fringe benefits. However, when an employer chooses to implement an employee fringe benefit policy and sets the terms and conditions for how those benefits are earned and paid in writing, such benefits become collectable as wages for any employee that is

determined to have met those terms and conditions. Some examples of fringe benefits that could be collected as an unpaid wage include:

- Vacation pay/ PTO hours / Personal leave.
- Sick leave.
- Holiday pay.
- Bonuses that are based on measurable production incentives or other measures that are capable of calculation.

Non-Monetary Complaints

In addition to unpaid wages, this agency also accepts complaints that do not involve monetary compensation. Some examples include:

- Not being provided a twenty-minute break period after six hours of work when the employee is not allowed to eat while working.
- When an employer does not meet payroll at least twice a month, or meets payroll twice a month but allows more than 19 days between paydays.
- Employees are not being provided a statement of earnings showing their rate of pay or salary amount, how their wages were calculated, and a listing of all wage deductions.
- Wages are being paid, but are being paid late.
- The employer's established pay period does not include the twelfth day immediately preceding the regular pay day.
- Outside of unforeseen emergency situations, when hospital nurses involved in direct patient care are "required" to work more than 16 hours per shift, or are not being provided a full 8 hours of time off between shifts.

ISSUES THAT ARE NOT UNDER THE AUTHORITY OF THE DIVISION OF LABOR

The Division of Labor does not have the authority to accept or investigate complaints concerning the following issues or situations: *Referral and contact information is provided on Page 4 for those listings marked with an asterisk.*

- **Bankruptcy Cases** – The employer owes wages, but has filed for protection under federal bankruptcy laws.
- **Black Lung Benefits.** *
- **Bonuses Not Capable of Calculation** – Whenever a bonus is not based on any type of production or incentive measures, it is considered a gift rather than a wage.
- **Court Proceedings for the Unpaid Wages Already in Progress** - The matter has already been, or is in the process of being, adjudicated in a court of law.
- **Discrimination** – Discrimination in the work place is addressed by the Human Rights Commission *
- **Drug Testing** - Employer policies relating to drug testing employees.

- **Employee Business Expenses** - The reimbursement of employee business expenses such as mileage etc. are not considered wages unless designated as such by written company policy.
- **Employment Relationship Does Not Exist** - Whenever an employment relationship does not, or did not, exist between the worker and the company involved, the services provided by the Division of Labor will not apply.
- **Family Medical Leave** - Protection is provided under the Family Medical Leave Act, which is under the authority of the United States Department of Labor. *
- **Federal Employees** - Unpaid wages owed to federal employees or to employees of federal contractors. *
- **Fringe Benefits not Authorized by Company Policy** - Hours that are not actually worked for benefits such as vacation pay, PTO benefits, sick leave, holiday pay, etc. that are not authorized by written company policy.
- **Hostile Work Environments.** *
- **Liquidated Damages** - Liquidated damages are the penalty assessed to employers for not paying within the timeframes as established by the West Virginia Wage Payment & Collection Act. Such damages must be awarded by a court of law.
- **Notices of Resignation or Retirement** – Not being allowed to work out the period of notice provided by the employee relating to his or her resignation or retirement.
- **Overtime Wages** - The authority for overtime wages in the state of West Virginia is the United States Department of Labor under the provisions of the Fair Labor Standards Act. *
- **Recall Rights** – State law does not address employee recall rights after lay off or separation of employment.
- **Seniority Rights** - State law does not provide for employee seniority rights.
- **Severance Pay** – Severance pay is considered a gift unless made a requirement of written company policy and determined as being capable of calculation.
- **Terminations** – West Virginia follows the at-will doctrine relating to employment relationships, which means that employers may terminate an employee without stating a reason or providing notice. (see discrimination)
- **Unemployment benefits.** *
- **Worker compensation issues.** *
- **W-2 forms** - Incorrect or missing forms. *
- **Wage Garnishments** – Court orders, or judgements, requiring employee wages be garnished. *
- **Work was not Performed in the State of West Virginia.**
- **Work Place Harassment.** *

REFERENCE & REFERRAL INFORMATION

The following is a list of issues that are not enforced by the West Virginia Division of Labor. Contact information for the agency responsible for each issue is also provided. If your question falls within any of these categories, we ask that you contact the agency listed for further information.

- **Black Lung Benefits** - Payments and health claims for miners. - USDOL, Office of Workers Compensation Programs, Division of Coal Mine Workers - 800 638 7072
- **COBRA Rights** and other pension requirements under the authority of the Federal Employee Retirement Insurance Security Act (ERISA). - USDOL, Employee Benefits Security Administration Division - 866 444 3272
- **Family Medical Leave Act** - USDOL, Wage & Hour Division - 866 487 9243
- The Rights of **Nursing Mothers** under the authority of the federal Patient Protection & Affordable Care Act (PPACA). - USDOL, Wage & Hour Division – 866 487 9243
- **Overtime Wages** - Overtime wages are under the authority of the Fair Labor Standards Act (FLSA) in West Virginia. - USDOL, Wage & Hour Division - 304 347 5206
- **Davis Bacon Construction Prevailing Wages** under the authority of the Federal Davis Bacon Act (DBA). - USDOL, Wage & Hour Division – 866 487 9243
- Non-construction **Prevailing Wage** requirements for administrative, engineering, janitorial positions etc. under the Federal Service Contract Act (SCA). - USDOL, Wage & Hour Division – 866 487 9243
- File for **Unemployment Benefits** – Workforce West Virginia, Charleston Office - 304 558 0292
- **WARN Notification Requirements** regarding plant and factory closures under the federal Worker Notification and Retraining Act. - USDOL, Employment & Training Administration - 202 693-3500
- **W-2 Form issues** – Did not receive a W-2 at all, or you have a W-2 form that needs corrected. - Internal Revenue Service (IRS) - 800 829 1040
- The rules for satisfying multiple **wage garnishment orders**. – USDOL, Wage & Hour Division - 866 487 9243
- **Worker Compensation Benefits** – West Virginia Insurance Commission - 304 558 3386
- Issuance of **Immigrant or Non-Immigrant Work Permits** (visas, green cards). - Home Land Security, US Citizen & Immigration Services - 202 693-3010
- **Work Place Discrimination** issues under the authority of the West Virginia Human Rights Commission. – 304 558 2616